

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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TIMOTHY C. KAMYK, PERSONAL  
REPRESENTATIVE OF THE ESTATE OF  
KENNETH KAMYK,  
Plaintiff

C.A. No.

v.

AGWAY FARM & HOME SUPPLY, LLC,  
Defendant

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**COMPLAINT WITH JURY CLAIM**

**Parties**

1. Timothy C. Kamyk is an individual who resides at 24 Greenfield Street, Windsor, Connecticut, and who is the personal representative of the Estate of the decedent, Kenneth Kamyk (“the decedent”).
2. The decedent was 57 years old and, prior to his death on February 22, 2021, resided at 70 Mallard Circle, Agawam, Massachusetts.
3. The defendant, Agway Farm & Home Supply, LLC., (“Agway”) is a limited liability company organized under the laws of the Delaware, with a principal place of business located at 6606 West Broad Street, Richmond, Virginia, and which operates a warehouse facility at 323 Lockhouse Road, Westfield, Hampden County, Massachusetts.

**Facts**

4. On February 22, 2021, the decedent was working within the course and scope of his employment with Summit Careers, Inc. while working as a temporary worker at Agway’s warehouse located at 323 Lockhouse Road in Westfield, Massachusetts.
5. On February 22, 2021, the decedent was operating a Crown order picker at Agway’s warehouse when he was struck and killed by another order picker being operated by Jaime Rivera Torres.
6. On February 22, 2021, Jaime Rivera Torres was a full-time employee of Agway.
7. On February 22, 2021, Jaime Rivera Torres had stacked the items on the pallet of his order picker so high that he could not see over or around the stack.

8. On February 22, 2021, Jaime Rivera Torres operated his order picker in a “forks-first” direction despite not being able to see the area of the aisle, which is where the decedent was located.
9. Jaime Rivera Torres did not know that the decedent was in the aisle before attempting to move his order picker.
10. Jaime Rivera Torres operated his order picker in such a manner that the operator platform was descending at the same time that he was attempting to move the machine out of the aisle.
11. The decedent was, at all times relevant, took all due care for the safety of himself and others.
12. At the time he was struck and killed by the order picker operated by Jaime Rivera Torres, the decedent was facing in the other direction.
13. Jaime Rivera Torres did not sound his horn before moving his order picker toward the decedent and therefore the decedent was unaware that the order picker was descending towards him in the moments before the fatal incident.
14. Kenneth Kamyk is survived by his 82-year-old mother, Joan Kamyk, his 84-year-old father, Walter Kamyk, his brothers Timothy, Walter, and Karl Kamyk, and his sister Kelly (Kamyk) Gagne.

### **JURISDICTION**

15. The plaintiff’s claims against Agway arise out of its acts of causing tortious injury in the Commonwealth of Massachusetts, transacting business, and/or having an interest in real property in the Commonwealth of Massachusetts. Agway is, therefore, subject to this Court’s jurisdiction, both under the common law and pursuant to the provisions of Massachusetts General Laws, Chapter 223A. Moreover, Agway is subject to the personal jurisdiction of this court because Agway maintains a continuing presence in and derives substantial revenue from activities conducted within this Commonwealth.

### **Count I (Wrongful Death-Negligence v. Agway Farm & Home Supply, LLC)**

16. The plaintiff realleges and reasserts the allegations set forth in paragraphs 1-15 above as if fully set forth herein.
17. Agway, by and through its agents and/or employee Jaime Rivera Torres, negligently operated the Crown order picker machine resulting in the death of the decedent on February 22, 2021.

18. Agway, by and through its agents and/or employees, negligently failed to adequately and properly train and supervise its warehouse operators, resulting in the death of the decedent on February 22, 2021.
19. As a direct and proximate result of the negligence of Agway, its agents, and/or its employees, Kenneth Kamyk suffered severe injuries that resulted in his death.

WHEREFORE, the plaintiff, Timothy C. Kamyk as the Personal Representative of the Estate of Kenneth Kamyk, demands judgment against Agway Farm & Home Supply, LLC. for all damages to which he and the Estate are entitled pursuant to M.G.L. c. 229, §2, plus interest and costs.

**Count II (Conscious Pain and Suffering-Negligence v. Agway Farm & Home Supply, LLC)**

20. The plaintiff realleges and reasserts the allegations set forth in paragraphs 1-19 above as if fully set forth herein.
21. As a direct and proximate result of the negligence of Agway, its agents, and/or employees, Kenneth Kamyk endured conscious pain and suffering and died on or about February 22, 2021.
22. The plaintiff, Timothy C. Kamyk as the Personal Representative of the Estate of Kenneth Kamyk, claims all damages to which he and the Estate are entitled pursuant to M.G.L. c. 229, §6.

WHEREFORE, the plaintiff, Timothy C. Kamyk as the Personal Representative of the Estate of Kenneth Kamyk, demands judgment against the defendant, Agway Farm & Home Supply, LLC, for the conscious pain and suffering experienced by Kenneth Kamyk.

**Count III (Wrongful Death – Punitive Damages v. Agway Farm & Home Supply, LLC)**

23. The plaintiff reasserts and realleges the allegations set forth in paragraphs 1-22 above as if fully set forth herein.
24. Agway trained, encouraged, and allowed its employees, including Jaime Rivera Torres, to disobey safety rules and regulations in an attempt to be more productive.
25. The plaintiff is entitled to an award of punitive damages pursuant to M.G.L. ch. 229 Section 2(3) because the decedent's death was caused by the gross negligence of Agway.

WHEREFORE, Timothy C. Kamyk as the Personal Representative of the Estate of Kenneth Kamyk, demands judgment against the defendant, HIAB USA, Inc., for punitive damages pursuant to M.G.L. ch. 229, Section 2(3).

**THE PLAINTIFF CLAIMS A TRIAL BY JURY.**

The plaintiff,  
TIMOTHY C. KAMYK, AS THE PERSONAL  
REPRESENTATIVE OF THE ESTATE OF  
KENNETH KAMYK  
By his Attorneys,

*/s/Richard J. Sullivan*

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